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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 543

WILLIAM C. CLAY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the District Court for the District of Columbia (R. 7-9) and of the Court of Appeals for the District of Columbia Circuit (R. 12-13) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 22, 1953 (R. 14). The petition for a writ of certiorari was filed on January 20,

1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a district court has jurisdiction under the Tucker Act to entertain a complaint against the United States seeking only specific relief and no money judgment.

2. Whether, assuming the district court had such jurisdiction, petitioner's allegations of duress stated a claim upon which relief could be granted.

3. Whether, assuming the complaint stated a cause of action, it was nevertheless barred by the six-year limitation provision in 28 U.S.C. 2401(a).

STATUTES INVOLVED

1. 28 U.S.C. 1346 provides in pertinent part:

> **§ 1346. United States as defendant.**
>
> (a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * * * *
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

2. 28 U.S.C. 2401 provides in pertinent part:

> **§ 2401. Time for commencing action against United States.**

> (a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. * * *

STATEMENT

Petitioner instituted this proceeding on December 17, 1951 (R. 2). As amended on February 4, 1952, the complaint, which was captioned "Complaint to Set Aside Patent Assignment" and invoked the district court's jurisdiction under the Tucker Act, "Title 28, Section 1346(a)(2), of the United States Code" (R. 2, 5), may be summarized as follows:

Petitioner entered Government employment on July 2, 1928, as a junior aeronautical engineer with the National Advisory Committee for Aeronautics (R. 5). "He worked in said capacity solely as a junior engineer, and at no time did his contract of employment contemplate any of his attention to or consideration of any invention" (R. 5). On September 6, 1938, while still in the employ of the National Advisory Committee for Aeronautics, petitioner was granted Letters Patent No. 2,129,565 for a De-Icing Attachment for Airplane Propellors (R. 5). On or about November 15, 1939, the United States, allegedly "without any basis in law or in fact," demanded that he assign to it all right, title, and interest in and to this patent (R. 5). He refused, and on September 19, 1940, the Government brought suit against him in the United States District Court for the District of Columbia to establish title to the patent in the Government and to require

him to transfer this title to the United States (R. 5).

Petitioner further alleged that following his answer on November 8, 1940 (R. 5), the United States admonished him that if the Government won the case, he would lose the patent, and that if he won, the Government "would then appeal the decision to the highest court necessary, thereby devolving a great and insufferable expense upon" him (R. 6). Thereafter, on March 31, 1942, "due to his inability to have financed said purportedly prohibitive costs, the physical illness of his then Counsel, fear motivated by the intervention of the Department of Justice, and as a result of coercion and economic duress, all of which resulted from actions of" the Government, he assigned the patent to the United States without any consideration, and the Government dismissed its action against him (R. 6). Based on these allegations, the complaint prayed for a judgment invalidating the assignment (R. 6).[1]

The district court granted the Government's motion to dismiss the complaint (R. 4), holding that under the Tucker Act it was "without jurisdiction to grant specific relief against the United States, its jurisdiction being limited to judgment for damages arising out of a contract, where such damages will not exceed the sum of $10,000" (R. 8). The court further held that the complaint failed to state a cause of action since the alleged duress consisted merely of a statement by the Government that it intended to take action which it

[1] The original complaint had also prayed that the Government be ordered to effect a reassignment of the patent (R. 4), but this prayer was omitted in the amended complaint (R. 6).

legally had a right to take (R. 9). Finally, the court ruled that neither the original nor the amended complaint stated a cause of action arising within six years prior to the institution of the suit (R. 9). The court of appeals (Clark, Bazelon, and Fahy, JJ) affirmed in a *per curiam* opinion (R. 12-13).

ARGUMENT

The courts below were clearly correct in holding that there is no jurisdiction to render specific relief against the United States under the Tucker Act. Furthermore, as held by the district court, even if the Tucker Act might be construed to confer jurisdiction to render the relief sought, the complaint failed to state a case of duress by the Government which could justify invalidation of the assignment. Finally, even if a cause of action had arisen in 1942, the instant suit, instituted ten years later, was barred by the six-year statute of limitations in 28 U.S.C. 2401(a).

1. Petitioner contends that 28 U.S.C. 1346(a)(2), *supra,* p. 2 (the 1948 codification of the Tucker Act, 24 Stat. 505, as amended), confers jurisdiction on the district courts of the United States to render specific relief (here, invalidation of an assignment) against the United States, even though this relief is the sole relief sought and is not ancillary to a prayer for a money judgment. But the law is well settled to the contrary. It has been "uniformly held, upon a review of the statutes creating the court [the Court of Claims] and defining its authority, that its jurisdiction is confined

to the rendition of money judgments in suits brought for that relief against the United States * * *." *United States* v. *Sherwood,* 312 U.S. 584, 588. See also *United States* v. *Jones,* 336 U.S. 641, 670; *United States* v. *Jones,* 131 U.S. 1; *Larson* v. *Domestic and Foreign Corp.,* 337 U.S. 682, 704. And the jurisdiction of the district courts under the Tucker Act is no different from that of the Court of Claims, for "the Tucker Act did no more than authorize the District Court to sit as a court of claims and * * * the authority thus given to adjudicate claims against the United States does not extend to any suit which could not be maintained in the Court of Claims." *United States* v. *Sherwood, supra,* at 591. See also *United States* v. *Jones,* 131 U.S. 1, 19; *National Insurance Co.* v. *Tidewater Co.,* 337 U.S. 582, 592-3; *Hill* v. *United States,* 149 U.S. 593, 598.

In *United States* v. *Jones,* 131 U.S. 1, the first decision of this Court involving an issue as to the scope of the jurisdiction conferred on the Court of Claims and the district courts by the Tucker Act, the Court rejected the very contention raised by petitioner here. In that case, as here, it was argued that the language of the Act conferred jurisdiction on the Court of Claims and the district courts to render general equitable relief against the United States. However, this Court ruled that Tucker Act jurisdiction was restricted to the redressing of money demands against the United States and that courts acting under the Act were not empowered to decree specific equitable relief against the Govern-

ment. While the Court went on to recognize that under the Tucker Act the Government did consent to a limited equity jurisdiction, the Court held that the language of the Act as a whole made it clear that such jurisdiction was intended only to include claims for money arising out of equitable demands. 131 U.S. at 18. The subsequent decisions of this Court are fully in accord with this limitation. See cases cited *supra*, p. 6.

The only situations in which specific relief may be granted under the Tucker Act are those in which such relief is sought merely as an incident to an ultimate money judgment. For example, this Court has held that where reformation of a contract is a necessary incident to a Tucker Act suit for money damages, the district court may reform the contract even though a request for a reformation alone would be beyond the court's jurisdiction. *United States* v. *Milliken Imprinting Co.*, 202 U.S. 168, 174. The Court of Claims and the district courts have consistently adhered to this limitation in exercising Tucker Act jurisdiction, granting equitable relief in aid of a money demand [2] but refusing to entertain independent requests for

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[2] *Milliken Imprinting Co.* v. *United States*, 40 C. Cls. 81, reversed on other grounds 202 U.S. 168; *Cramp and Sons Ship and Engine Bldg. Co.* v. *United States*, 46 C. Cls. 521, affirmed 239 U.S. 221; *Admiral Oriental Line* v. *United States*, 86 F. 2d 201 (C.A. 2); *Iowa-Wisconsin Bridge Co.* v. *United States*, 114 C. Cls. 464; *Harrison Engineering and Const. Co.* v. *United States*, 107 C. Cls. 205; *South Boston Iron Works* v. *United States*, 34 C. Cls. 174; *United States Cartridge Co.* v. *United States*, 62 C. Cls. 214.

specific relief against the United States.[3] Petisioner's action here is clearly within the latter category. He admittedly has not requested money damages (see Pet. 3), but seeks only to have the 1942 assignment invalidated. Both courts below properly held that such a request solely for specific relief was beyond the district court's jurisdiction under the Tucker Act.

2. Even if the district court had jurisdiction to grant the relief sought by petitioner, the complaint was properly dismissed for failure to state a claim upon which relief could be granted. The request for rescission of the 1942 patent assignment was grounded on alleged duress on the Government's part in procuring the assignment. This duress consisted of purported statements by Government representatives advising petitioner that the Government intended to press the litigation it was legally entitled to maintain, and apprising him of the potentially heavy costs he might incur in the course of these legal proceedings. In essence, petitioner's prayer for rescission was based upon the assertion that because of his reluctance to incur these costs he assigned his rights and interests in the patent to the Government.

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[3] *Lynn* v. *United States*, 110 F. 2d 586, 588 (C.A. 5) (prayer for reformation of deed and a declaratory judgment would have to be ignored even though reformation of a contract and a money judgment could be decreed); *United States* v. *Turner*, 47 F. 2d 86 (C.A. 8) (bill to quiet title, beyond jurisdiction); *Blenkner* v. *United States*, 65 C. Cls. 18 (no jurisdiction to grant right of discovery); *Leather* v. *United States*, 61 C. Cls. 388 (no jurisdiction to set aside a fraudulent conveyance of land).

The district court was clearly correct in holding that the complaint failed to allege the kind of duress which could warrant rescission of the assignment. For "the expense and annoyance of litigation is 'part of the social burden of living under government.'" *Petroleum Exploration, Inc.* v. *Public Service Comm'n,* 304 U.S. 209, 221-222, quoting *Bradley Lumber Co.* v. *Labor Board,* 84 F. 2d 97, 100 (C.A. 5). See also *Myers* v. *Bethlehem Corp.,* 303 U.S. 41, 51-52. And so it is firmly established that a threat to resort to civil litigation is not "duress" justifying equitable rescission of a contract even though the threatened suit would not be successful, provided the threat is made in the belief that a cause of action does exist. *Automatic Radio Mfg. Co.* v. *Hazeltine Research,* 176 F. 2d 799 (C.A. 1), affirmed, 339 U.S. 827; *In re Prima Co.,* 98 F. 2d 952 (C.A. 7), certiorari denied *sub nom. Keig* v. *Harris Trust and Savings Bank,* 305 U.S. 658; *Manigault* v. *S. M. Ward and Co.,* 123 Fed. 707 (C.C. D.S.C.), affirmed *sub nom. Manigault* v. *Springs,* 199 U.S. 473.

3. Finally, petitioner's suit was barred by the statute of limitations. The alleged coerced assignment of the patent to the Government, which forms the basis for petitioner's complaint, took place on March 3, 1942, ten years before this action to invalidate the assignment was commenced. 28 U.S.C. 2401(a) permits the maintenance of suits against the United States only on claims arising

within six years prior to the institution of the proceeding.[4]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1954.

[4] This six year limitation is jurisdictional (*Munro* v. *United States*, 303 U.S. 36; *Edwards* v. *United States*, 163 F. 2d 268 (C.A. 9)) and need not be pleaded as a defense to a Tucker Act suit against the United States. *Carpenter* v. *United States*, 56 F. 2d 828 (C.A. 2); *Gans S.S. Line* v. *United States*, 105 F. 2d 955 (C.A. 2), certiorari denied, 308 U.S. 613, cf. *Finn* v. *United States*, 123 U.S. 227; *Phillips* v. *Grand Trunk Ry.*, 236 U.S. 662.

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